



## **Guidelines:**

# Mandatory notifications about registered students

March 2020

# Contents

<b>Executive summary</b>	<b>2</b>
<b>1. Mandatory notification requirements</b>	<b>3</b>
1.1 What do these guidelines cover?	3
1.2 What do these guidelines not cover?	3
1.3 Who is a student?	3
1.4 Who should make a mandatory notification?	4
1.5 How do I make a notification?	4
1.6 How does the National Law protect notifiers?	4
1.7 Who is exempt from notifying?	5
1.8 What about voluntary notifications?	5
<b>2. Notifications about students</b>	<b>6</b>
2.1 What issues must be reported?	6
2.2 What is 'reasonable belief'?	6
2.3 What are my obligations?	7
<b>Appendix A: National Law extracts</b>	<b>9</b>

# Executive summary

The Australian Health Practitioner Regulation Agency (Ahpra) works in partnership with the National Boards to implement the National Registration and Accreditation Scheme (the National Scheme) and administer the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law)<sup>1</sup>.

Ahpra supports the Boards to set standards and policies for registered practitioners. We manage notifications, register practitioners and students<sup>2</sup>.

The National Law establishes requirements for mandatory reporting. This guideline has been developed to explain those requirements.

## Mandatory notification requirements

To protect the public from the risk of harm, registered health practitioners and education providers must report concerns about registered students. This is a legal requirement under the National Law. This document sets out:

- who must make a mandatory notification
- how to do it, and
- how notifiers are legally protected when doing so.

It also explains the circumstances that do and do not trigger a mandatory notification.

The guidelines recognise that deciding whether to make a mandatory notification can be a difficult decision and requires a balanced judgement which should holistically consider relevant risk factors. The guidelines also provide information about who may assist in making this decision (see *section 1.5 How do I make a notification?*).

## Notifications about students

There is only one ground for a mandatory notification about students.

Practitioners and education providers only need to notify us when they have a 'reasonable belief' that a student has an impairment that, when undertaking clinical training, may place the public at substantial risk of harm (a very high threshold for reporting risk of harm to the public). This document explains what reasonable belief is and what impairment means in this context.

The requirement to report is also based on the level of risk. This document also gives more advice about when impairment must be reported, and the obligations of notifiers.

---

1 The National Boards developed these guidelines under section 39 of the National Law (see Appendix A).

2 The exception for student registration is in psychology, where students are registered as provisional psychologists. In this case, the *Guidelines: Mandatory notifications about registered practitioners* apply.

# 1. Mandatory notification requirements

These guidelines explain the requirements for making a mandatory notification about a student under the National Law. This protects the public by ensuring that risks posed by students undertaking clinical training are reported.

Read this section to understand the reporting requirements, who has to notify us and how to do this.

## 1.1 What do these guidelines cover?

Under the National Law, certain groups must make mandatory notifications about students under some limited circumstances. These guidelines cover:

- who must make a mandatory notification
- how to do it, and
- how notifiers are legally protected when doing so.

**If we receive a mandatory notification, the Board will consider all relevant information before deciding if action is needed to protect the public. It will not automatically take regulatory action (such as, for example, a caution).**

## 1.2 What do these guidelines not cover?

These guidelines do not provide detailed information about the notifications process. There are a number of possible stages in the notifications process and not every notification goes through all the possible stages. For more information about the notification process please see the [Ahpra website](#).

These guidelines do not affect other legal mandatory notification requirements – for example, about child abuse.

They do not cover when practitioners or employers of practitioners must report practitioners. For more details please read our *Guideline: Mandatory notifications about registered health practitioners*.

Under section 130 of the National Law, registered health practitioners and students must notify Ahpra of certain relevant events within seven days of those events occurring. These guidelines do not cover those obligations. Information on giving notice of certain relevant events is available on the [Ahpra website](#).

For more information on how the National Law defines students and education providers, see the [Ahpra website](#).

## 1.3 Who is a student?

Under the National Law, a student is someone enrolled in an approved program of study **and is registered as a student with their respective National Board** (education providers are responsible for providing information to enable students to be registered)<sup>3</sup>.

<sup>3</sup> However, someone who holds provisional registration as a Psychologist and is undertaking a postgraduate approved program of study or internship, is not considered a student for the purposes of these Guidelines. Anyone considering a mandatory notification about a Psychologist with provisional registration should consult the *Guideline: mandatory notifications about registered practitioners*.

## 1.4 Who should make a mandatory notification?

These groups may need to make a mandatory notification about students:

- treating practitioners (a practitioner who is providing treatment to a student and forms a concern while providing treatment)
- non-treating practitioners, and
- education providers.

Treating practitioners in Western Australia providing a health service to a student are exempt from the requirement to make a mandatory notification but may still be obliged to make a notification as a non-treating practitioner.

All three groups must report students who, by undertaking clinical training with an impairment, are placing the public at substantial risk of harm. A substantial risk of harm is **a very high threshold for reporting risk of harm.**

Employers and other people or organisations do not have to make a mandatory notification about students, but they can consider whether to raise concerns by making a voluntary notification about a student if they believe the student's impairment could have a detrimental effect on their clinical training.

The National Law does not require students to make a mandatory notification. If they have concerns about a practitioner or another student, they may wish to discuss this with the education provider.

## 1.5 How do I make a notification?

You can make a mandatory notification to Ahpra. The simplest way is to use the portal on our website, see: [www.ahpra.gov.au/notifications](http://www.ahpra.gov.au/notifications). You can also call us on 1300 419 495 and tell us that you want to make a notification.

Our website also has information about how we manage both mandatory and voluntary notifications. It also explains how to raise a concern if you are in Queensland or New South Wales.

If you are making a mandatory notification and want your identity to be confidential, please let us know. We will endeavour to keep your details confidential. Please see the [Ahpra website](#) for more information about how we manage notifications.

If, after reading this guideline, you are still unsure about whether to make a mandatory notification, seek advice from your insurer, legal advisor, or professional association.

## 1.6 How does the National Law protect notifiers?

The National Law protects anyone who makes notifications in good faith. 'Good faith' has its ordinary meaning of being well intentioned or without malice.

Section 237 of the National Law provides protection from civil, criminal and administrative liability, including defamation, for people making notifications in good faith. However, if you make a notification that is vexatious or not in good faith, you may be subject to regulatory action (such as, for example, a caution).

The National Law clarifies that making a notification is not a breach of professional etiquette or ethics, or a departure from accepted standards of professional conduct. It is consistent with professional conduct and a practitioner's ethical responsibilities.

Privacy obligations do not prevent you from making a mandatory or voluntary notification.

## 1.7 Who is exempt from notifying?

There are exemptions to mandatory notifications for practitioners where they:

- are employed or engaged by a professional indemnity insurer, and form the belief from a disclosure in the course of a legal proceeding or the provision of legal advice arising from the insurance policy
- form the belief while providing advice about legal proceedings or the preparation of legal advice
- are exercising functions as a member of a quality assurance committee, council or other similar body approved or authorised under legislation which prevents disclosure of the information, or
- reasonably believe that someone else has already made a notification about the same concern.

Treating practitioners in Western Australia providing a health service to a student are exempt from the requirement to make a mandatory notification. However, these practitioners still have a professional and ethical obligation to protect and promote public health and safety, so they might consider whether to make a voluntary notification.

Please refer to Appendix A: National Law extracts to see if these exemptions apply to you.

You might not need to make a mandatory notification if there are safeguards in place to reduce the risk of harm to the public.

An education provider may have its own process for mandatory reporting obligations. To assess whether the process or circumstances reduce the risk of harm to the public, a practitioner who is an employee of an education provider, may find it helpful to talk to their employer and or their professional association about the concern. The employee practitioner might still have to make a mandatory notification.

## 1.8 What about voluntary notifications?

The National Law also allows anyone to make voluntary notifications about a student. Anyone (including practitioners and education providers) can make a voluntary notification about a student if they believe the student's impairment could have a detrimental effect on their clinical training.

The National Law provides only limited circumstances for a voluntary notification about students. Concerns about intoxication (not amounting to an impairment), sexual misconduct and significant departure from accepted professional standards are not grounds for a mandatory or voluntary notification about a student. If you have concerns about these matters you can consider whether to raise these with the education provider.

For more information about making a voluntary notification, please go to our website, see: [www.ahpra.gov.au/notifications](http://www.ahpra.gov.au/notifications), or call us on 1300 419 495.

## 2. Notifications about students

This section defines impairment, the only issue that may trigger a mandatory notification about a student, and the concept of 'reasonable belief'. It explains your obligations, when you must make a mandatory notification about a student and when you do not need to report.

Read this section to help assess whether you need to make a mandatory notification.

### 2.1 What issues must be reported?

A mandatory notification about a student can only be triggered by concerns about impairment. The National Law defines 'impairment' as 'a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect the student's capacity to carry out clinical training:

- as part of the approved program of study in which the student is enrolled, or
- arranged by an education provider.'

**A health condition and impairment are not the same thing. An illness or condition that does not have a detrimental impact on a student's capacity to undertake clinical training is not an impairment.**

You must assess if there is a substantial risk of harm to the public when deciding whether to make a notification. In this context, 'the public' means:

- the student's patients or clients in a clinical training environment, and
- the wider community that could be put at risk of harm.

**Concerns about intoxication, standards of practice or sexual misconduct cannot trigger a mandatory notification about a student.** Although they are not grounds for a mandatory (or voluntary) notification under the National Law, an education provider or health service provider would typically deal with such concerns under their own policies and processes. If you have concerns about these matters you can raise them with the education provider.

### 2.2 What is 'reasonable belief'?

Before making a mandatory notification, you must form a 'reasonable belief'. To do so, you generally need direct knowledge (not just a suspicion) of the incident or behaviour that led to the concern. As a practitioner or education provider, you are most likely to do this when you directly observe the incident or behaviour. Speculation, rumours, gossip or innuendo are not enough to form a reasonable belief.

You may have a report from a reliable source or sources about incident or behaviour they directly experienced or observed. In that case, you should encourage the person with the most direct knowledge to consider whether to make a mandatory notification themselves.

Your professional background, level of insight, experience and expertise will help you form a reasonable belief. Mandatory notifications should be based on personal knowledge of reasonably trustworthy facts or circumstances that would justify a person of reasonable caution, acting in good faith, to believe that the concern and a risk to the public exists.

These principles about forming a 'reasonable belief' come from legal cases. In short, a reasonable belief is a state of mind based on reasonable grounds. It is formed when all known considerations, including matters of opinion, are objectively assessed and taken into account.

## 2.3 What are my obligations?

You must make a notification if you form a reasonable belief that a student, undertaking clinical training with an impairment, is placing the public at substantial risk of harm (a very high threshold for reporting risk of harm to the public).

**Not all impairments need to be reported. A student may carry out clinical training with a mental health condition, physical health condition or physical illness, but that is not enough to trigger a mandatory notification.**

**Similarly, if the student's impairment affects their capacity to carry out clinical training but does not place the public at substantial risk of harm, you do not need to make a mandatory notification.**

You should only make a notification if you believe there is a substantial risk of harm. A substantial risk of harm is a very high threshold for reporting risk of harm to the public.

**Example 1:** You have been made aware that one of your students has been diagnosed with a mental health condition, which at times has required hospitalisation. The condition is now responding well to treatment, and the student is compliant with the treatment plan. The student is due to go on clinical placement next month, however, having considered the risk factors, as there is not a very high risk of harm to the public, you decide a mandatory notification is not required.

Consider if the risk to the public is controlled or managed through effective treatment or other strategies. If so, this decreases the risk of harm – and the need to report.

Controls that reduce the risk and severity of harm to the public affect the obligation to report. You do not need to report if there are effective safeguards to manage the impairment, such as:

- treatment
- a break from study, such as sick leave
- modified scope of practice
- strategies used to manage impacts of impairment
- compliance with monitoring and supervision, or
- a reasonable belief that Ahpra has already been notified.

**Use the following chart to help assess the level of risk. Factors including circumstance, practice context, controls such as oversight and incident reporting, and other arrangements can affect the level of risk and the need to report. The risk assessment for a very high risk of harm should holistically consider all relevant factors, with some factors weighted more heavily than others, depending on the circumstance.**

### Factors to help you assess the risk of harm

Factors	Lower	>	>	Higher
<b>Likelihood of contact with patients</b>	Nil (no contact)	>	>	High (on placement)
<b>Nature, extent and severity of impairment</b>	Minor	>	>	Wide-ranging and severe
<b>Training context</b>	Direct and constant supervision	>	>	No direct supervision
<b>How well the impairment can be managed with treatment</b>	Well-managed	>	>	Unmanaged
<b>Extent of engagement with treatment</b>	Highly engaged and compliant	>	>	Disengaged – likely to go on placement when they shouldn't
<b>Strategies used to manage impacts of impairment</b>	Highly effective	>	>	Ineffective

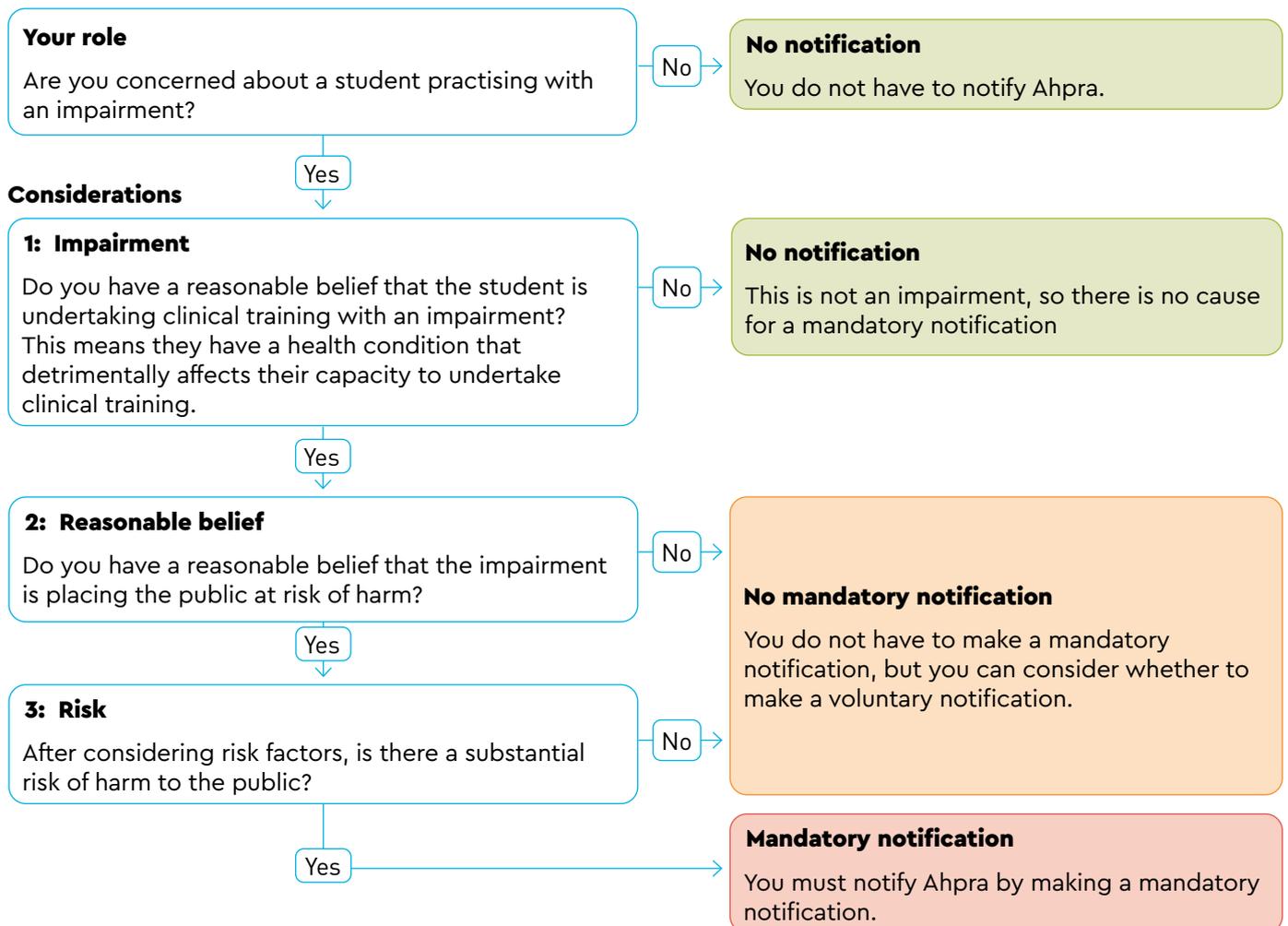
There are consequences for practitioners and education providers who fail to make a mandatory notification when they have to, although this is not a criminal offence under the National Law:

- if you are a practitioner who has failed to notify, your National Board may take regulatory action against you (such as, for example, a caution). It will consider all the circumstances before it decides whether to do so.
- if you are an education provider who has failed to notify (as section 143 of the National Law requires), the National Board that registered the student must publish details of this on its website. If the Board recommends it, Ahpra may make a statement about the failure in our annual report.

Mandatory notification obligations only extend to an education provider's (organisation's) staff if the staff member is also a registered practitioner. An education provider is expected to have processes and protocols in place to assess when and how it would make a mandatory notification.

Use the following flowchart to help you assess whether to make a mandatory notification.

**Education provider or practitioner: Impairment**



# Appendix A: National Law extracts

## 5 Definitions

**Impairment**, in relation to a person, means the person has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect—

- (a) for a registered health practitioner or an applicant for registration in a health profession, the person's capacity to practise the profession; or
- (b) for a student, the student's capacity to undertake clinical training—
  - (i) as part of the approved program of study in which the student is enrolled; or
  - (ii) arranged by an education provider.

**Education provider** means—

- (a) a university; or
- (b) a tertiary education institution, or another institution or organisation, that provides vocational training; or
- (c) a specialist medical college or other health profession college.

## Part 5 National Boards

### Division 3 Registration standards and codes and guidelines

#### 39 Codes and guidelines

A National Board may develop and approve codes and guidelines—

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

#### Example

1. A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

#### 40 Consultation about registration standards, codes and guidelines

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.
- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website—
  - (a) a registration standard developed by the Board and approved by the Ministerial Council;
  - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect—
  - (a) on the day it is published on the National Board's website; or
  - (b) if a later day is stated in the registration standard, code or guideline, on that day.

#### 41 Use of registration standards, codes or guidelines in disciplinary proceedings

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.

## Part 7 Registration of health practitioners

### Division 11 Miscellaneous

#### 130 Registered health practitioner or student to give National Board notice of certain events

- (1) A registered health practitioner or student must, within 7 days after becoming aware that a relevant event has occurred in relation to the practitioner or student, give the National Board that registered the practitioner or student written notice of the event.
- (2) A contravention of subsection (1) by a registered health practitioner or student does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.
- (3) In this section—

**relevant event** means—

(a) in relation to a registered health practitioner—

- (i) the practitioner is charged, whether in a participating jurisdiction or elsewhere, with an offence punishable by 12 months imprisonment or more; or
- (ii) the practitioner is convicted of or the subject of a finding of guilt for an offence, whether in a participating jurisdiction or elsewhere, punishable by imprisonment; or
- (iii) appropriate professional indemnity insurance arrangements are no longer in place in relation to the practitioner's practice of the profession; or
- (iv) the practitioner's right to practise at a hospital or another facility at which health services are provided is withdrawn or restricted because of the practitioner's conduct, professional performance or health; or
- (v) the practitioner's billing privileges are withdrawn or restricted under the Medicare Australia Act 1973 of the Commonwealth because of the practitioner's conduct, professional performance or health; or
- (vi) the practitioner's authority under a law of a State or Territory to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines is cancelled or restricted; or
- (vii) a complaint is made about the practitioner to an entity referred to in section 219(1)(a) to (e); or
- (viii) the practitioner's registration under the law of another country that provides for the registration of health practitioners is suspended or cancelled or made subject to a condition or another restriction; or

(b) in relation to a student—

- (i) the student is charged with an offence punishable by 12 months imprisonment or more; or
- (ii) the student is convicted of or the subject of a finding of guilt for an offence punishable by imprisonment; or
- (iii) the student's registration under the law of another country that provides for the registration of students has been suspended or cancelled.

## Part 8 Health, performance and conduct

### Division 2 Mandatory notifications

#### 140 Definition of notifiable conduct

In this Division—

**notifiable conduct**, in relation to a registered health practitioner, means—

- (a) practising the practitioner's profession while intoxicated by alcohol or drugs; or
- (b) engaging in sexual misconduct in connection with the practice of the practitioner's profession; or
- (c) placing the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
- (d) placing the public at risk of harm by practising the profession in a way that constitutes a significant departure from accepted professional standards.

## 141 Mandatory notifications by health practitioners other than treating practitioners

- (1) This section applies to a registered health practitioner (the first health practitioner) who, in the course of practising the first health practitioner's profession, forms a reasonable belief that—
  - (a) another registered health practitioner (the second health practitioner) has behaved in a way that constitutes notifiable conduct; or
  - (b) a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.
- (2) The first health practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's notifiable conduct or the student's impairment.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.]

- (2A) However, subsection (2) does not apply if the first health practitioner forms the reasonable belief in the course of providing a health service to the second health practitioner or student.
- (3) A contravention of subsection (2) by a registered health practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) For the purposes of subsection (1), the first health practitioner does not form the reasonable belief in the course of practising the profession if—
  - (a) the first health practitioner—
    - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and
    - (ii) forms the reasonable belief the second health practitioner has behaved in a way that constitutes notifiable conduct, or the student has an impairment, as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy; or
  - (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the notifiable conduct or impairment for the purposes of a legal proceeding or the preparation of legal advice; or
  - (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the notifiable conduct or impairment is an issue; or
  - (d) the first health practitioner—
    - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and
    - (ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information; or
  - (e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the notifiable conduct or impairment that forms the basis of the reasonable belief.

### 141A Mandatory notifications by treating practitioners of sexual misconduct

- (1) This section applies to a registered health practitioner (the treating practitioner) who, in the course of providing a health service to another registered health practitioner (the second health practitioner), forms a reasonable belief that the second health practitioner has engaged, is engaging, or is at risk of engaging, in sexual misconduct in connection with the practice of the practitioner's profession.
- (2) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's conduct that forms the basis of the reasonable belief.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.]

- (3) A contravention of subsection (2) by the treating practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) This section applies subject to section 141C.

### **141B Mandatory notifications by treating practitioners of substantial risk of harm to public**

- (1) Subsection (2) applies to a registered health practitioner (the treating practitioner) who, in the course of providing a health service to another registered health practitioner (the second health practitioner), forms a reasonable belief that the second health practitioner is placing the public at substantial risk of harm by practising the profession—
  - (a) while the practitioner has an impairment; or
  - (b) while intoxicated by alcohol or drugs; or
  - (c) in a way that constitutes a significant departure from accepted professional standards.
- (2) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's conduct that forms the basis of the reasonable belief.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.]

- (3) Subsection (4) applies to a registered health practitioner (also the treating practitioner) who, in the course of providing a health service to a student, forms a reasonable belief that the student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.
- (4) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the student's impairment.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.]

- (5) In considering whether the public is being, or may be, placed at substantial risk of harm, the treating practitioner may consider the following matters relating to an impairment of the second health practitioner or student—
  - (a) the nature, extent and severity of the impairment;
  - (b) the extent to which the second health practitioner or student is taking, or is willing to take, steps to manage the impairment;
  - (c) the extent to which the impairment can be managed with appropriate treatment;
  - (d) any other matter the treating practitioner considers is relevant to the risk of harm the impairment poses to the public.
- (6) A contravention of subsection (2) or (4) by the treating practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (7) This section applies subject to section 141C.

### **141C When practitioner does not form reasonable belief in the course of providing health service**

- (1) This section applies if a registered health practitioner (the first health practitioner) forms a reasonable belief about—
  - (a) a matter, relating to another registered health practitioner (the second health practitioner), mentioned in section 141A(1) or 141B(1); or
  - (b) a matter, relating to a student, mentioned in section 141B(3).
- (2) For this Division, the first health practitioner is taken not to form the reasonable belief in the course of providing a health service to the second health practitioner or student if—
  - (a) the first health practitioner—
    - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and

- (ii) forms the reasonable belief about the matter as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy; or
- (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the matter for the purposes of a legal proceeding or the preparation of legal advice; or
- (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the matter is an issue; or
- (d) the first health practitioner—
  - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and
  - (ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information; or
- (e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the matter that forms the basis of the reasonable belief.

## 142 Mandatory notifications by employers

- (1) If an employer of a registered health practitioner reasonably believes the health practitioner has behaved in a way that constitutes notifiable conduct, the employer must notify the National Agency of the notifiable conduct.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.]

- (2) If the National Agency becomes aware that an employer of a registered health practitioner has failed to notify the Agency of notifiable conduct as required by subsection (1), the Agency must give a written report about the failure to the responsible Minister for the participating jurisdiction in which the notifiable conduct occurred.
- (3) As soon as practicable after receiving a report under subsection (2), the responsible Minister must report the employer's failure to notify the Agency of the notifiable conduct to a health complaints entity, the employer's licensing authority or another appropriate entity in that participating jurisdiction.
- (4) In this section—

**employer**, of a registered health practitioner, means an entity that employs the health practitioner under a contract of employment or a contract for services.

**licensing authority**, of an employer, means an entity that under a law of a participating jurisdiction is responsible for licensing, registering or authorising the employer to conduct the employer's business.

## 143 Mandatory notifications by education providers

- (1) An education provider must notify the National Agency if the provider reasonably believes—
  - (a) a student enrolled in a program of study provided by the provider has an impairment that, in the course of the student undertaking clinical training as part of the program of study, may place the public at substantial risk of harm; or
  - (b) a student for whom the education provider has arranged clinical training has an impairment that, in the course of the student undertaking the clinical training, may place the public at substantial risk of harm;

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.]

- (2) A contravention of subsection (1) does not constitute an offence.
- (3) However, if an education provider does not comply with subsection (1)-

- (a) the National Board that registered the student must publish details of the failure on the Board's website; and
- (b) the National Agency may, on the recommendation of the National Board, include a statement about the failure in the Agency's annual report.

#### **144 Grounds for voluntary notification**

- (1) A voluntary notification about a registered health practitioner may be made to the National Agency on any of the following grounds—
  - (a) that the practitioner's professional conduct is, or may be, of a lesser standard than that which might reasonably be expected of the practitioner by the public or the practitioner's professional peers;
  - (b) that the knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the practitioner's health profession is, or may be, below the standard reasonably expected;
  - (c) that the practitioner is not, or may not be, a suitable person to hold registration in the health profession, including, for example, that the practitioner is not a fit and proper person to be registered in the profession;
  - (d) that the practitioner has, or may have, an impairment;
  - (e) that the practitioner has, or may have, contravened this Law;
  - (f) that the practitioner has, or may have, contravened a condition of the practitioner's registration or an undertaking given by the practitioner to a National Board;
  - (g) that the practitioner's registration was, or may have been, improperly obtained because the practitioner or someone else gave the National Board information or a document that was false or misleading in a material particular.
- (2) A voluntary notification about a student may be made to the National Agency on the grounds that—
  - (a) the student has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more; or
  - (b) the student has, or may have, an impairment; or
  - (c) that the student has, or may have, contravened a condition of the student's registration or an undertaking given by the student to a National Board.

#### **145 Who may make voluntary notification**

Any entity that believes that a ground on which a voluntary notification may be made exists in relation to a registered health practitioner or a student may notify the National Agency.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.]

### **Division 4 Making a notification**

#### **146 How notification is made**

- (1) A notification may be made to the National Agency—
  - (a) verbally, including by telephone; or
  - (b) in writing, including by email or other electronic means.
- (2) A notification must include particulars of the basis on which it is made.
- (3) If a notification is made verbally, the National Agency must make a record of the notification.

## Part 11 Miscellaneous

### Division 1 Provisions relating to persons exercising functions under Law

#### 237 Protection from liability for persons making notification or otherwise providing information

- (1) This section applies to a person who, in good faith—
  - (a) makes a notification under this Law; or
  - (b) gives information in the course of an investigation or for another purpose under this Law to a person exercising functions under this Law.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Without limiting subsection (2)—
  - (a) the making of the notification or giving of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and
  - (b) no liability for defamation is incurred by the person because of the making of the notification or giving of the information.
- (4) The protection given to the person by this section extends to—
  - (a) a person who, in good faith, provided the person with any information on the basis of which the notification was made or the information was given; and
  - (b) a person who, in good faith, was otherwise concerned in the making of the notification or giving of the information.

## Application of the exemptions of the National Law in Western Australia

### 141 Mandatory notifications by health practitioners

- (1) This section applies to a registered health practitioner (the first health practitioner) who, in the course of practising the first health practitioner's profession, forms a reasonable belief that —
  - (a) another registered health practitioner (the second health practitioner) has behaved in a way that constitutes notifiable conduct; or
  - (b) a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.
- (2) The first health practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's notifiable conduct or the student's impairment.

Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

- (3) A contravention of subsection (2) by a registered health practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) For the purposes of subsection (1), the first health practitioner does not form the reasonable belief in the course of practising the profession if —
  - (a) the first health practitioner—
    - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and
    - (ii) forms the reasonable belief the second health practitioner has behaved in a way that constitutes notifiable conduct, or the student has an impairment, as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy;

or
  - (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the notifiable conduct or impairment for the purposes of a legal proceeding or the preparation of legal advice; or
  - (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the notifiable conduct or impairment is an issue; or
  - (ca) the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student; or
  - (d) the first health practitioner—
    - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and
    - (ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information;

or
  - (e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the notifiable conduct or impairment that forms the basis of the reasonable belief.